

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 04-80370

Plaintiff,

HON. JOHN CORBETT O'MEARA

-vs-

D-4 AKRAM ABDUL KARIM BERRO,

Defendant.

/

**GOVERNMENT'S RESPONSE TO DEFENDANT AKRAM ABDUL KARIM BERRO'S
MOTION FOR DISCLOSURE OF IDENTITY
AND FOR PRODUCTION OF GOVERNMENT INFORMANT**

The United States of America, by its undersigned attorneys, responds as follows to Defendant Akram Abdul Karim Berro's Motion for Disclosure of Identity and for Production of Government Informant.

Defendant seeks the identity of a confidential source for the government so that he can interview the source before trial. Defendants have been afforded the opportunity to inspect and copy consensual recordings of conversations between the informant and some of the defendants. The government intends to call the confidential informant as a witness at trial.

The Sixth Circuit has held that the government need not disclose the identity of a testifying informant prior to trial. United States v. Perkins, 994 F.2d 1184, 1190-91 (6th Cir.), cert. denied, 510 U.S. 903 (1993). "Ordinarily, a defendant is not entitled to a list of the names and addresses of the government's witnesses." Id. at 1190; Fed. R. Crim. P. 16. This

rule is reflected in this Court's Standing Order for Discovery and Inspection, which protects against the disclosure of witness names before trial. Administrative Order No. 03-AO-027, ¶ 9.¹ This rule of non-disclosure applies to testifying informants. Perkins, 994 F. 2d at 1191.

In Perkins, the Sixth Circuit distinguished between a testifying informant, as in this case, and a non-testifying informant who possesses information that could be helpful to the defendant. Id. Even with a non-testifying, in light of the public interest in protecting the flow of information from informants, an informant must be disclosed only upon a showing by the defendant that disclosure is essential to a fair trial. United States v. Moore, 954 F.2d 379, 381 (6th Cir. 1992). The distinction between testifying and non-testifying informants is an important one. Perkins at 1109. The fact that the informant testifies at trial "rules out the possibility that the informer's testimony could somehow be helpful to [defendant]." Id. (quoting United States v. Pennick, 500 F.2d 184, 187 (10th Cir.), cert. denied, 419 U.S. 1051 (1974)).

Because the confidential informant in this case will be called as a witness at trial by the government, defendant's request for disclosure of his identity before trial should be

¹ Paragraph 9 provides that witness lists need not be providing to opposing parties: "Witness List. To enable the judge to better estimate the length of trial, each party shall file directly with the judge the day before trial (**but not the opposite party**) a list of witnesses by name or description which it reasonably anticipates will be called to testify at trial noting the approximate amount of time the party anticipates will be required for examination of each witness." (Emphasis added.)

denied. To avoid delay at trial, the government will produce within a reasonable time in advance of trial any witness statements covered by the Jencks Act, 18 U.S.C. § 3500, as well as any Giglio material with respect to this confidential source.

CONCLUSION

For the reasons stated above, defendant's motion should be denied.

Respectfully submitted,

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s/Cathleen M. Corken
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Dated: March 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2005, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to the following david_tholen@fd.org

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